(2009) 11 GUJ CK 0004

In the Gujarat High Court

Case No : Tax Appeal No. 1521 of 2008

Commissioner of Central Excise and Customs — APPELLANT

Vs

Harish Maganbhai Patel — RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 209A
Central Excise Rules, 2002 — Rule 26
Central Excises and Salt Act, 1944 — Section 35(G)

Citation : (2010) 255 ELT 71

Hon'ble Judges : Rajesh H Shukla, J;K.A. Puj, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Central Excise department has filed this Tax Appeal u/s 35(G) of the Central Excise Act, 1944 proposing to formulate the following substantial question of law:

(a) Whether, in the facts and circumstances of the case, the tribunal is justified in setting aside the personal penalty imposed on the respondent under Rule 209A of the Central Excise Rules, 1944 presently Rule 26 of the Central Excise Rules, 2002 despite the respondent having admitted to have knowingly concerned himself in the illicit and clandestine production, non accountal and removal of excisable goods and evasion of Central Excise duty and having admitted to the commission of the contravention and offences under the Act and the Rules on the directions of the Chairman cum Managing Director of the assessee?

2. Mr. R.J. Oza, Learned Senior Standing Counsel appearing for the Excise Department has submitted that the CESTAT has passed the common order in the case of the company as well as two individuals namely Shri Prem Prakash Tyagi, the Managing Director of the company and Shri Harish M. Patel, the present Respondent in this appeal. The CESTAT has allowed the appeal only on the

ground that the show cause notice was issued after a period of six months from the date of visit of the officers and the completion of the investigation, and hence the notice was held to be barred by limitation in light of the several decisions referred to and relied upon by the CESTAT.

3. Mr. Oza has further further submitted that the appeal filed by the Excise department against the company being Tax Appeal No. 1584 of 2008 has been ''admitted'' by this Court on 13-9-2009. He has further submitted that even the appeal filed by the Excise Department against the Managing Director, being Tax Appeal No. 1587 of 2008 has also been ''admitted'' by this Court. Since this appeal was left out and since there is a common order, he submitted that this appeal should also be admitted and the substantial question of law as proposed by the appellant be framed.

4. We have considered the submissions made by Mr. Oza and also perused the orders passed by the authorities below.

5. So far as the present respondent is concerned, he is simply a Excise Clerk in the company and having four years service at the time when the incident in question was taken place. In the statement recorded by the Excise authorities, the respondent has categorically stated that he was doing it as per the instructions given to him by Mr. Tyagi. Even the penalty imposed on him was of Rs. 25,000/-.

Considering all these aspects, we are of the view that this is not a fit case where the substantial question of law should be formulated by this Court. The case of the present respondent is clearly distinguishable than that of Mr. Prem Prakash Tyagi who is the Managing Director of the Company.

6. For the foregoing reasons, we do not think it just and proper to admit this appeal and formulate the substantial question of law as proposed by the Excise Department.

7. The appeal is therefore summarily dismissed.

